

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

April 14, 2011

Jinsung Hahn, CPA  
Openpop.com, Inc.  
3055 Wilshire Blvd., Suite 730  
Los Angeles, CA 90010

Re: Openpop.com, Inc.  
FY 2010 Regulatory Fee Penalty Waiver Request  
Filed 12-16-10  
Fee Control No. RROG-10-00013351  
Regulatory Fee Amount: \$ 12,597.00  
Late Penalty Amount: \$ 3,149.25  
Date Regulatory Fee Paid: 12-27-10  
Date Late Penalty Paid: 12-27-10

Dear Mr. Hahn:

This letter responds to the above-referenced request for waiver of the penalty for late payment of FY 2010 regulatory fee. For the reasons stated herein, your waiver request is denied.

Section 9(a)(1) of the Communications Act states that the Commission "shall assess and collect regulatory fees" to recover the costs of its regulatory activities.<sup>1</sup> Section 9(c)(1) provides that "[t]he Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required" by Section 9(a) and that "[s]uch penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner."<sup>2</sup> The Commission's regulations provide that "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee . . . which was not paid in a timely manner."<sup>3</sup> For FY 2010, the deadline for paying regulatory fees was August 31, 2010.<sup>4</sup>

You paid your regulatory fee after the August 31, 2010, deadline for filing regulatory fees, and therefore failed to meet this obligation. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."<sup>5</sup>

<sup>1</sup> 47 U.S.C. §159(a)(1).

<sup>2</sup> 47 U.S.C. §159(c)(1).

<sup>3</sup> 47 C.F.R. §1.1164.

<sup>4</sup> *Public Notice, FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET)*, DA 10-1451, 2010 WL 3133517 (Aug. 9, 2010) (*FY 2010 Filing Deadline Public Notice*).

<sup>5</sup> See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

In *Assessment and Collection of Regulatory Fees for Fiscal Year 2010*, 25 FCC Rcd 9278, 9279 (2010) (*2010 Report and Order*), which was adopted on July 8, 2010, and released on July 9, 2010, the Commission stated that “[c]onsistent with our established practice, we intend to collect these [FY 2010] regulatory fees during an August 2010 filing window.” On August 9, 2010, the Commission announced the August 31, 2010, due date for filing the FY 2010 regulatory fees.<sup>6</sup> Given that the Commission announced an August 2010 filing window on July 9, 2010, and adopted the August 31, 2010, due date on August 9, 2010, we find that you had ample notice of the filing deadline to ensure compliance with their FY 2010 regulatory fee payment obligations.

The assertion in your request, “that this is the first year of returning fees without paper notice from FCC” does not provide sufficient grounds for a waiver of the regulatory fee rules, particularly given the Commission’s announcement regarding the August 2010 filing window and access to instructions for Fee Filer access in the 2010 Report and Order.<sup>7</sup> Moreover, history of timely payment of the regulatory fee does not provide sufficient grounds to support a waiver of the late payment penalties.<sup>8</sup> Finally, Section 9(c)(1) does not limit the late payment penalty to regulatees whose failure to pay was knowing or willful. In short, the Commission has waived the Section 9(c)(1) penalty “only in the most extraordinary circumstances”<sup>9</sup> and we find no such extraordinary circumstances here. Your request for waiver or reduction of the penalties for late payment of the FY 2010 regulatory fee is denied.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

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<sup>6</sup> See *FY 2010 Filing Deadline Public Notice*.

<sup>7</sup> See *2010 Report and Order* at 9291 (advising regulatees to “check[] the Commission’s website periodically beginning in July, . . . to ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment”).

<sup>8</sup> See *TWC Digital Phone, LLC* (OMD, Sept. 28, 2009); *Big River Telephone Company* (OMD, July 21, 2009).

<sup>9</sup> *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

Stephen French

# 13851

**From:** jinsung hahn [jinsunghahncpa@gmail.com]  
**Sent:** Thursday, December 16, 2010 8:29 PM  
**To:** ARINQUIRIES  
**Subject:** Waiver request for penalty on #10RE009099  
**Attachments:** Bill 10RE009099.pdf

RR0G-10-00013351

Company name: Openpop.com, Inc.  
FRN: 0008944936  
Bill number: 10RE009099

Dear Sir/Madam,

The company, Openpop.com, Inc., recently got to know they had a outstanding balance payable to FCC. Because we all were used to get all the bills by paper from FCC until now, nobody in the company hasn't noticed that we actually have to review the public notices from FCC website, compute our own fee, and return the fee to the Commission.

Even though the company has failed to pay the fee on time, because this is the first year of returning fees without paper notice from FCC, and also the company has always tried to keep up good standing with all the filing and payment requirements with FCC, we hope the Commission could understand the company position and finally accept this waiver request for 25% penalty of \$3,149.25 on bill number 10RE009099.

We sincerely appreciate for your time to resolve this matter, and should you have any question or comment, please feel free to call our office at any time.  
Thank you.

Jinsung Hahn

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JINSUNG HAHN  
Certified Public Accountant  
Tel: 213-381-3030  
Fax: 213-381-3033  
E mail: [jhahn2003@sbcglobal.net](mailto:jhahn2003@sbcglobal.net), [jinsunghahncpa@gmail.com](mailto:jinsunghahncpa@gmail.com)

3055 Wilshire Blvd.  
STE 730  
Los Angeles, CA 90010

Ann M.

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

June 6, 2011

OFFICE OF  
MANAGING DIRECTOR

Dirk D. Hall, Sr., General Manager  
WMJD/WNRG  
1011 Radio Drive  
Grundy, Virginia 24614

Re: Peggy Sue Broadcasting Corporation  
FY 2010 Regulatory Fees: WMJD-FM, WNRG-AM, and W257AV  
Fee Control No. RROG-10-00013266

Dear Mr. Hall:

This letter responds to your request dated August 31, 2010 (*Request*),<sup>1</sup> for a waiver of the Fiscal Year (FY) 2010 regulatory fees on the grounds of financial hardship. You did not, however, specify the Stations or fees included within the scope of the *Request*. Because our records show that Peggy Sue Broadcasting Corporation (PSBC) is the licensee for Stations WMJD-FM, WNRG-AM, and W257AV, we assume you intended to include those Stations and the associated fees. Our records also show that PSBC did not pay the FY 2010 regulatory fees with the *Request*, and you did not petition for deferral of payment; rather you unilaterally offered to make three installment payments.<sup>2</sup> Although not in the amounts or on the dates offered, you made two partial payments that were both received by the FCC after the date the FY 2010 regulatory fees were due.<sup>3</sup> Thus, because none of the fees were paid on the date due, under the law,<sup>4</sup> we were required to impose a penalty of twenty-five percent (25%) of the full amount of each of the three Station fees. In addition, because the two payments did not satisfy the full amounts owed, the resulting balance due means PSBC is delinquent in paying the FY 2010 regulatory fees. Hence, because PSBC did not request deferral and it is delinquent in paying a fee, under the law,<sup>5</sup> the Commission must dismiss your *Request*. We need not go further to address the *Request* for waiver; however, we did, and for the separate reasons stated next, we

<sup>1</sup> Letter from Dirk D. Hall, Sr. to Federal Communications Commission, Office of the Managing Director, Washington, DC 20554 (Aug. 31, 2010) (*Request*).

<sup>2</sup> *Request* at 1 ("Today [Aug. 31] I am sending a check for \$600.00 and am asking permission to make two additional payments . . . \$600.00 and a final payment of \$700.00 [on Oct. 31, 2010].").

<sup>3</sup> The FY 2010 regulatory fees were due on or before Aug. 31, 2010. Under 47 C.F.R. §§ 1.1157 and 1.1164, if payment is not received on the date due, it is late and subject to penalties. No payments were received until Sep. 15, 2010 and Mar. 7, 2011, when the Commission received payments of \$600 and \$895, respectively. These two payments were insufficient to pay in full the FY 2010 regulatory fees and accrued penalties. Hence, under 47 C.F.R. § 1.1941(f), the partial payments were applied "first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."

<sup>4</sup> 47 U.S.C. § 159(c)(1) (The "penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.").

<sup>5</sup> 47 C.F.R. § 1.1166(c) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.; 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 47 U.S.C. § 159(c)(2).

deny your *Request*. Thus, we require PSBC to pay the balance of the FY 2010 regulatory fees and any accrued, but unpaid late payment penalties.

You assert that “[o]ur company last year [2009] lost over \$53,000.00 in revenues due to a bad economy and power loss during a severe storm in December.”<sup>6</sup> In support of your *Request*, you submitted a “short version [Profit and Loss Statement] for 2009” captioned “Peggy Sue Broadcasting Media Inc” (PSBM).<sup>7</sup>

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>8</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.<sup>9</sup> Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public.<sup>10</sup> “Mere allegations or documentation of financial loss, standing alone,” does not suffice and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”<sup>11</sup> In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>12</sup> Thus, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Your *Request* does not meet this standard. You did not fully document Peggy Sue Broadcasting Corporation’s financial position; rather you furnished only a short form Profit and Loss Statement for “Peggy Sue Broadcasting Media Inc.” That Statement is insufficient for two reasons. First, a short form Profit and Loss Statement does not include the required range of financial information discussed above.<sup>13</sup> Second, you represent PSBC and PSBM to be different legal entities,<sup>14</sup> and you did not establish the grounds to consider that PSBM’s financial

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<sup>6</sup> *Request* at 1. You did not clarify whether “our company” is intended to mean the licensee, PSBC, or the named entity on the Profit and Loss Statement, PSBM.

<sup>7</sup> *Id.*, Attachment.

<sup>8</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 ¶ 12 (1995).

<sup>9</sup> 9 FCC Rcd at 5344 ¶ 29.

<sup>10</sup> 10 FCC Rcd at 12761-62 ¶ 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

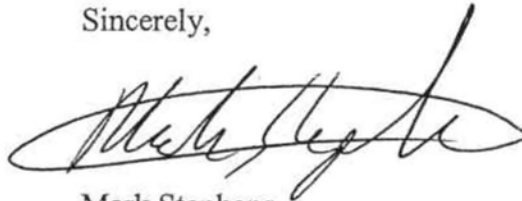
<sup>13</sup> Complete financial information should include the disposition of the proceeds from PSBC’s sale of Station WRIC-FM.

<sup>14</sup> Our records indicate PSBM has an FCC Registration Number (FRN) (0011451028) different from the FRN (0003785128) PSBC used in its broadcast station license application (*See* FCC File BLH-20050722ABK).

information is relevant in evaluating PSBC's ability to pay its fees.<sup>15</sup> We therefore find that you failed to show PSBC lacked sufficient funds to pay each Station's FY 2010 regulatory fee and maintain service to the public. Thus, we deny your request for waiver of the FY 2010 regulatory fees on the grounds of financial hardship. In addition, because you did not pay the regulatory fees on time or request deferment of payment, under 47 U.S.C. § 159(c), we assessed a penalty of twenty-five percent (25%) of the amount of the fees that were not paid in a timely manner.

Payment of \$930.00, the balance of the FY 2010 regulatory fees, is now due. That amount should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written over a horizontal line.

Mark Stephens  
Chief Financial Officer

Enclosure

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<sup>15</sup> A petitioner has the burden of clarifying its position before the Commission. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997).

RRG-10-00013266

August 31, 2010

WMJD/WNRG  
1011 Radio Dr.  
Grundy, Virginia 24614

Federal Communications Commission  
Office of the Managing Director  
445 12th Street, S.W., Room 1-A625  
Washington, D.C. 20554  
Attn: Regulatory Fee Waiver/Reduction Request

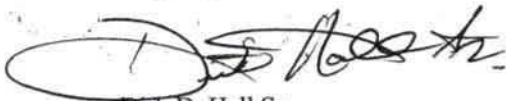
To Whom it may concern,

I contacted the FCC helpline about two weeks ago trying to speak to someone regarding regulatory fee's. I waited about four days and received no return call. I called back and spoke to a Monique Goodman who sent me the info about waivers. Today I am sending a check for \$600.00 and am asking permission to make two additional payments, one of \$600.00 and a final payment of \$700.00. The final payment to be sent October 31<sup>st</sup>, 2010.

This is the first time in over ten years we have ever had a problem making good on our commitments. Our company last year lost over \$53,000.00 in revenues due to a bad economy and power loss during a severe storm in December! I am enclosing copies of short version P&L's for 2009 and also the early months of 2010. Unfortunately, this year has not any better than 2009.

I would also please ask that no additional late fee's be added since we are barely making our payroll and operational costs. If this is acceptable please let me know as soon as possible. You may call me @276-935-7227 or email me at [wric100\\_7@hotmail.com](mailto:wric100_7@hotmail.com).

Regards,



Dirk D. Hall Sr.  
GM

FRN 0003785128

Adana

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

NOV 9 2011

Lori Withrow, Esquire  
Southern, Allen & Withrow  
Attorneys at Law  
Post Office Box 17248  
Little Rock, AR 72222

Re: Pinnacle Media, LLC  
Stations: KPBI 81593 (Eureka Springs, AR),  
KFDF-CA 52418 (Fort Smith, AR), KFFS-CA  
52430 (Fayetteville, AR), KHMF-CA 52420  
(Bentonville, AR), KKAF-CA 52432 (Siloam  
Springs, AR), KRAH-CA 52423 (Paris, AR), KSJF-  
CA 52425, (Poteau, OK), KWNL-CA 52426  
(Winslow, AR), K33HE 58284 (Fort Smith, AR),  
K48FL 14387 (Fort Smith, AR), KEGW-LP 48534  
(Fayetteville, AR), KLRA-LP 57548 (Little Rock,  
AR), KUFS-LP 58281 (Fort Smith, AR), KWFT-LP  
58282 (Fort Smith, AR), and KXUN-LP 14386  
(Fort Smith, AR).  
FY 2010 Regulatory Fees  
Fee Control No. RROG-10-00013046

Dear Ms. Withrow:

This letter responds to your request dated August 26, 2010 (*Request*),<sup>1</sup> for a waiver of the Fiscal Year (FY) 2010 regulatory fees owed by Pinnacle Media, LLC (*Pinnacle*) for the 15 above-listed Stations on the grounds of financial hardship. Our records reveal that *Pinnacle* did not pay the FY 2010 regulatory fees, which total \$17,360.00, but your *Request* did petition to defer payment. For the reasons discussed, below, your *Request* is denied.

You provided *Pinnacle's* Profit & Loss Statement for the period August 2009 through June 2010 (*Profit & Loss*) and a Declaration from Byron Southern, a Member of *Pinnacle* (*Southern Declaration*). You assert that "Pinnacle Media, LLC purchased the Stations out of bankruptcy and closed on the sale on November 3, 2009" and that "Pinnacle has had a negative cash flow since taking over the Stations . . . [so it] does not have the revenue to pay its regulatory fees and maintain operation . . . and continue service to the public."<sup>2</sup> Further, you assert that the

<sup>1</sup> Letter from Lori Withrow, Southern, Allen & Withrow, 12410 Cantrell, Suite 100, Little Rock, AR 72223 to Federal Communications Commission, Office of the Managing Director (Aug. 26, 2010) (*Request*).

<sup>2</sup> *Id.* at 1-2.

“Commission has repeatedly allowed that bankruptcy is sufficient to establish financial hardship and that it will waive the regulatory fees for a bankrupt entity.” The *Southern Declaration* asserts *Pinnacle* is not engaged in any other business that generates revenues or expenses not reflected in the *Profit & Loss*, that payments to members, officers or directors, and the like are not included in expenses, and that the projected cash flow “for all of 2010 will be negative.” This limited information does not present a compelling case of financial hardship to waive the FY 2010 regulatory fees.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>3</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.<sup>4</sup> Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public.<sup>5</sup> “Mere allegations or documentation of financial loss, standing alone,” do not suffice and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”<sup>6</sup> In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>7</sup> Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Where relevant, the fact that the licensee is in bankruptcy is evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its burden. Thus, we review each request, including those in which bankruptcy is asserted, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee, and we may decline such a request.<sup>8</sup> We note in this instance, *Pinnacle* is not in bankruptcy, rather it asserts it “purchased the Stations out of bankruptcy.”

*Pinnacle* does not present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs. First, the *Profit & Loss* does not

<sup>3</sup> 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

<sup>4</sup> 9 FCC Rcd at 5344 ¶ 29.

<sup>5</sup> 10 FCC Rcd at 12761-62 ¶ 13.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

provide the range of financial information required to fully document its financial position and show how payment of the FY 2010 regulatory fees will adversely impact *Pinnacle's* ability to serve the public. Negative *revenue*, alone, does not establish hardship. Thus, *Pinnacle* should have provided additional relevant information, to include a balance sheet, cash flow projection for the next twelve months (with an explanation of how calculated), a list of the entity's highest paid employees, other than officers, and the amount of their compensation, and similar information.<sup>9</sup> Moreover, because *Pinnacle* engaged in related transactions that are relevant to its financial status, it should have included the details of those matters. We discuss the lack of information, apparent inconsistencies, and our conclusions below.

Because *Pinnacle* did not explain the entries on the *Profit & Loss* we are unable to evaluate the relationship of income and expenses to *Pinnacle's* asserted hardship and its ability to pay the regulatory fees. For example, *Pinnacle* should have clarified the relevance and apportionment of the income and expenses reported for the months before November 3, 2009, the date on which it acquired the Stations out of bankruptcy, the details of the "LMA Expense," and the entry "FCC Filing/Reg. Fees "\$7,540.00." In addition, *Pinnacle* should have provided information as to assets and liabilities, which typically is reported on a balance sheet. Furthermore, *Pinnacle* asserted it acquired the Stations out of bankruptcy, but it did not explain the details of the resulting purchase agreement and court documents on file with the Commission<sup>10</sup> that presented relevant findings and warranties and relate the matters to the *Request*. For example, in contrast to *Pinnacle's* current assertion that it will experience financial hardship if it has to pay the required regulatory fees, at the bankruptcy court *Pinnacle* "provided [to the court] adequate assurance of future performance under each of the Assumed Contracts by demonstrating sufficient financial wherewithal to perform its obligations under such Assumed Contracts."<sup>11</sup> The court's finding suggests that at the time of the purchase and into the future, *Pinnacle* had adequate financial resources to meet contractual obligations. We infer from that information that *Pinnacle* demonstrated it had sufficient financial resources to pay other necessary business obligations, which would include required regulatory fees. Moreover, under the terms of the Asset Purchase Agreement, *Pinnacle* represented and warranted it "is legally, financially and otherwise qualified to assume and hold the Licenses and to acquire, own and operate the Stations . . . ."<sup>12</sup> In this *Request*, *Pinnacle* did not disclose either the information it presented to satisfy the court or the information showing a material change from its earlier status.

In addition, two undisclosed financial transactions are relevant to *Pinnacle's* financial ability to pay the FY 2010 regulatory fees. First, *Pinnacle* apparently received \$200,000.00 from Riverside Media, LLC.<sup>13</sup> Second, *Pinnacle* paid \$25,000.00 cash toward \$250,000.00 it agreed

<sup>9</sup> We will not speculate as to whether *Pinnacle's* business activities extend to matters in addition to the 15 Stations or as to the specific details of certain line item expenses.

<sup>10</sup> FCC File BALTTI-20090814AAK, Attachment 11, In re Equity Media Holding Corp., et al, *Order Authorizing and Approving (I) That Certain Asset Purchase Agreement Between Certain of the Debtors and Pinnacle Media, LLC and (II) The Consummation of the Transactions Thereunder, Including (A) The Assumption and Assignment of Certain Unexpired Leases and Executory Contracts, and (B) The Sale of Certain Assets Free and Clear of All Liens, Claims and Encumbrances*, U.S. Bankruptcy Court (E.D. AR, No. 4:08-BK-17646) (Oct 19, 2009), Finding L. at 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, Attachment 4, Asset Purchase Agreement, Art. IV, ¶4.8,

<sup>13</sup> See FCC File BALCDT-20100713AAK, Exhibit 11, Assets Purchase Agreement, section 2 (executed Nov. 3, 2009).

Lori Withrow, Esq.

to pay to purchase station KKYK-CA.<sup>14</sup> Details of these transactions and other business activity pertaining to *Pinnacle's* assets and liabilities are relevant in our determination whether the public interest is served by waiving payment of \$17,360.00. Because *Pinnacle* failed to show compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs,<sup>15</sup> the *Request* is denied.

You also requested confidential treatment of the material that you submitted with your Request. Under 47 C.F.R. § 0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If we receive a request for access to the information you submitted, you will be notified and afforded the opportunity to respond at that time.

Payment of \$17,360.00 for the FY 2010 regulatory fees is now due. That regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If the licensee fails to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fee,<sup>16</sup> and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,<sup>17</sup> the Commission will initiate collection proceedings.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure

<sup>14</sup> The petitioner has the burden of clarifying its position before the Commission. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997). See FCC Form 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License, File No. BALTTA-20100802AZR (Jul. 30, 2010) (The terms of the Asset Purchase Agreement provided for *Pinnacle* to pay \$25,000 cash and a \$225,000 promissory note.).

<sup>15</sup> 10 FCC Rcd at 12761-62 ¶ 13.

<sup>16</sup> 47 U.S.C. § 159(c)(1). See 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

<sup>17</sup> See 47 C.F.R. § 1.1901, *et seq.*

Ann M -

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

October 21, 2011

John C. Trent, Esquire  
Putbrese Hunsaker & Trent, P.C.  
200 South Church Street  
Woodstock, Virginia 22664

RE: Radio Station WDEK (AM)  
Request for Exemption from FY  
2011 Regulatory Fee  
Fee amount: \$1,800.00  
Penalty: \$450.00  
Fee Control No.: RROG 10-00013754

Dear Counsel:

This is in response to your request dated August 19, 2011 (Request)<sup>1</sup> that the Commission determine under 47 C.F.R. § 1.1162(b), you are exempt from paying the Fiscal year (FY) 2011 regulatory fees owed by radio station WDEK (AM) because you assert that you are a court appointed receiver. In the alternative, you ask the Commission to waive the FY 2011 regulatory fee on the ground that the station is in receivership, thus it "is in financial hardship." Because you did not include documentation to support your Request, we are unable to make either determination, and under section 1.1166(c) of our rules<sup>2</sup>, your Request is dismissed.

Under section 1.1162(b), regulatory fees are not required from "licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." You did not furnish evidence that you qualify as a government entity. Specifically, asserting that you are a court appointed receiver does not establish the existence of that exemption.

Concerning the waiver request, our rule at 47 C.F.R. § 1.1166(c) provides "[w]aiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship." You did not pay the fee or petition for deferment, and you did not provide us with that required supporting documentation of financial hardship.

---

<sup>1</sup> Facsimile Transmission from John C. Trent, Esquire, Law Offices Putbrese Hunsaker & Trent, P.C., 200 S. Church St., Woodstock, VA 22664 to Office of Managing Director, FCC (Aug. 19, 2011).

<sup>2</sup> 47 C.F.R. § 1.1166(c).

The FY 2011 regulatory fee of \$1,800.00 plus the 25% statutory penalty<sup>3</sup> of \$450.00 is now due. The regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If you fail to pay the full amount due by that date, interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,<sup>4</sup> the Commission will initiate collection proceedings.

Because you are delinquent in paying the FY 2011 regulatory fee, a debt owed the United States, under 47 C.F.R. § 1.1910, the Commission will withhold action on any application filed or pending, and if the debt plus the accrued penalty is not paid, or other satisfactory arrangements are not made, any application filed or pending may be dismissed. Moreover, the Commission may collect amounts due by administrative offset.<sup>5</sup>

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure

---

<sup>3</sup> 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164.

<sup>4</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>5</sup> 47 C.F.R. § 1.1912.

John C. Trent  
OF COUNSEL  
Lauren A. Colby

David M. Hunsaker  
(1944 - 2002)  
Keith E. Putbress  
(Retired)

\*Not Admitted In VA

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August 19, 2011

VIA FACSIMILE AND E-MAIL

Federal Communications Commissions  
Office of the Managing Director  
445 12<sup>th</sup> Street, S.W., Room I-A625  
Washington DC 20554  
Facsimile No. (202) 418-7869  
Attention: Regulatory Fee Waiver/Reduction Request

Re: Letter Request for Regulatory Fee Exemption

Dear Sir or Madam:

I, John C. Trent, Esq., am a State of South Carolina Court Appointed Receiver ("Receiver") of Radio Station WDEK (AM), Lexington, South Carolina (FCC Facility ID No. 250) ("Station"). Pursuant to the FCC Regulatory Fee Information Website, a Fee Exempt Request is being submitted *via facsimile and email* for the Receiver. Pursuant to 47 CFR. § 1.1162(b), I hereby respectfully request the Managing Director for a waiver of the annual FY 2011 regulatory fee for the Station. Under this Section 1.1162(b), duly appointed public officials are fee exempt. I am a State Court Appointed Receiver for the Station and should therefore be exempt under this Section of the Rules. Copies of the my Appointment have been previously provided to the Commission, however such documentation will be submitted again, upon Staff request.

In addition to being a duly appointed South Carolina State Officer of the Courts, the Station, being in the nature of a Receivership, is in financial hardship. The Commission has granted waivers of the fees due to financial hardships on numerous occasions. *See Letter to Jeffrey L. Timmons, P.C. (KGJB (TV), El Dorado, Arkansas, KM Television of El Dorado, L.L.C., released June 18, 2010; see also Letter to Dan J. Alpert (WHDY-LP, Panama City, FL, Confessora Peralta), released March 1, 2010.* Under the circumstances, the Receiver respectfully requests a waiver of the Station's regulatory fees for 2011.

If this Letter Request is denied, the Receiver requests that any late penalty be waived and further that the Commission does not associate a "red-light" designation with the Station. If you require further information or have any questions, please contact this office.

Respectfully Submitted,



John C. Trent

Adama

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

October 25, 2011

John C. Trent, Esquire  
Putbrese Hunsaker & Trent, P.C.  
200 South Church Street  
Woodstock, Virginia 22664

RE: Radio Station WHLQ-FM (formerly  
WHFD-FM)  
Request for Exemption from FY  
2011 Regulatory Fee  
Fee amount: \$675.00.  
Penalty: \$168.75.  
Fee Control No.: RROG 11-00013753

Dear Counsel:

This is in response to your request dated August 19, 2011 (Request)<sup>1</sup> that the Commission determine under 47 C.F.R. § 1.1162(b), Todd W. Fowler is exempt from paying the Fiscal year (FY) 2011 regulatory fees owed by radio station WHLQ-FM (formerly WHFD-FM) because, as you assert, he is a court appointed receiver. In the alternative, you ask the Commission to waive the FY 2011 regulatory fee on the ground that the station is in receivership, thus it "is in financial hardship." Because you did not include documentation to support your Request,<sup>2</sup> we are unable to make either determination, and under section 1.1166(c) of our rules,<sup>3</sup> your Request is dismissed.

Under section 1.1162(b), regulatory fees are not required from "licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." You did not furnish evidence that Todd W. Fowler qualifies as a government entity, and asserting that he is a court appointed receiver does not establish the existence of that exemption.

<sup>1</sup> Facsimile Transmission from John C. Trent, Esquire, Law Offices Putbrese Hunsaker & Trent, P.C., 200 S. Church St., Woodstock, VA 22664 to Office of Managing Director, FCC (Aug. 19, 2011).

<sup>2</sup> The petitioner has the burden of clarifying its position before the Commission. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997). Here, you assert that a receiver was appointed, but you failed to provide either the reason for the appointment or any supporting documentation, e.g., the petition to the court asserting the basis for the petition for appointment, the reason for the appointment, and copies of the relevant court filings. We will not speculate on either the grounds asserted or the reasons given for the court to grant the petition for receivership.

<sup>3</sup> 47 C.F.R. § 1.1166(c).

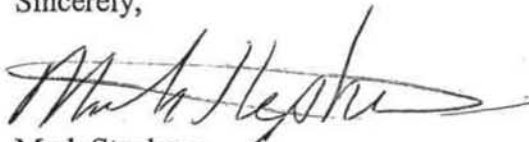
Concerning the waiver request, our rule at 47 C.F.R. § 1.1166(c) provides “[w]aiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.” You did not pay the fee or petition for deferment, and you did not provide us with that required supporting documentation to establish a compelling case of financial hardship.<sup>4</sup>

The FY 2011 regulatory fee of \$675.00 plus the 25% statutory penalty<sup>5</sup> of \$168.75 is now due. The regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If you fail to pay the full amount due by that date, interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,<sup>6</sup> the Commission will initiate collection proceedings.

Because you are delinquent in paying the FY 2011 regulatory fee, a debt owed the United States, under 47 C.F.R. § 1.1910, the Commission will withhold action on any application filed or pending, and if the debt plus the accrued penalty is not paid, or other satisfactory arrangements are not made, any application filed or pending may be dismissed. Moreover, the Commission may collect amounts due by administrative offset.<sup>7</sup>

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure

<sup>4</sup> The unsupported assertion that a state court appointed a receiver does not establish that the licensee is experiencing financial hardship. Assessment and Collection Of Regulatory Fees For Fiscal Year 2003, *Report and Order*, 18 FCC Rcd. 15985, 15989, ¶ 11, 19 FCC Rcd. 4701 (2003) (“case-by-case review of fee waiver requests is necessary to determine whether a waiver would be in the public interest, even in bankruptcy cases.”). See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

<sup>5</sup> 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164. The penalty required by section 159(c)(1) is waived “only in the most extraordinary circumstances,” which are not described by your situation. McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

<sup>6</sup> See 47 C.F.R. § 1.11901, *et seq.*

<sup>7</sup> 47 C.F.R. § 1.1912.

John C. Trent

OF COUNSEL  
Lauren A. Colby\*

David M. Hunsaker  
(1944 - 2002)  
Keith E. Putbresi  
(Retired)

\*Not Admitted In VA

Law Offices of  
**Putbresi Hunsaker & Trent, P.C.**  
200 South Church Street  
Woodstock, Virginia 22664  
[www.phtpclaw.com](http://www.phtpclaw.com)

August 19, 2011

VIA FACSIMILE AND E-MAIL

Telephones:  
(540) 459-7646  
Facsimile:  
(540) 459-7656

JCT e-mail:  
[lccman3@shentel.net](mailto:lccman3@shentel.net)  
LAC e-mail:  
[lac@lcolby.com](mailto:lac@lcolby.com)

Federal Communications Commissions  
Office of the Managing Director  
445 12<sup>th</sup> Street, S.W., Room I-A625  
Washington DC 20554  
Facsimile No. (202) 418-7869  
Attention: Regulatory Fee Waiver/Reduction Request

Re: Letter Request for Regulatory Fee Exemption

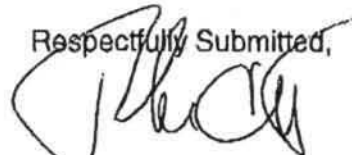
Dear Sir or Madam:

Todd W. Fowler is a Commonwealth of Virginia Court Appointed Receiver ("Receiver") of Radio Station WHLQ (FM) (formerly WHFD), Lawrenceville, Virginia (FCC Facility ID No. 72503) ("Station"). Pursuant to the FCC Regulatory Fee Information Website, a Fee Exempt Request is being submitted *via facsimile and email* for the Receiver. The Receiver, by his counsel, and pursuant to 47 CFR. § 1.1162(b), hereby respectfully requests the Managing Director for a waiver of the annual FY 2011 regulatory fee for the Station. Under this Section 1.1162(b), duly appointed public officials are fee exempt. Mr. Fowler is a State Court Appointed Receiver for the Station and should therefore be exempt under this Section of the Rules. Copies of the Appointment of Mr. Fowler have been previously provided to the Commission, however such documentation will be submitted again, upon Staff request.

In addition to being a duly appointed Virginia State Officer of the Courts, the Station, being in the nature of a Receivership, is in financial hardship. The Commission has granted waivers of the fees due to financial hardships on numerous occasions. See *Letter to Jeffrey L. Timmons, P.C. (KGJB (TV), El Dorado, Arkansas, KM Television of El Dorado, L.L.C., released June 18, 2010; see also Letter to Dan J. Alpert (WHDY-LP, Panama City, FL, Confessora Peralta), released March 1, 2010.* Under the circumstances, the Receiver respectfully requests a waiver of the Station's regulatory fees for 2011.

If this Letter Request is denied, the Receiver requests that any late penalty be waived and further that the Commission does not associate a "red-light" designation with the Station. If you require further information or have any questions, please contact this office.

Respectfully Submitted,



John C. Trent

Adams

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

October 25, 2011

John C. Trent, Esquire  
Putbrese Hunsaker & Trent, P.C.  
200 South Church Street  
Woodstock, Virginia 22664

RE: Radio Station WTKE-FM  
Request for Exemption from FY  
2011 Regulatory Fee  
Fee amount: \$1,850.00.  
Penalty: \$462.50.  
Fee Control No.: RROG 11-00013756

Dear Counsel:

This is in response to your request dated August 19, 2011 (Request)<sup>1</sup> that the Commission determine under 47 C.F.R. § 1.1162(b), R. Lee Hagan is exempt from paying the Fiscal Year (FY) 2011 regulatory fees owed by radio station WTKE-FM because, as you assert, he is a court appointed receiver. In the alternative, you ask the Commission to waive the FY 2011 regulatory fee on the ground that the station is in receivership, thus it "is in financial hardship." Because you did not include documentation to support your Request,<sup>2</sup> we are unable to make either determination, and under section 1.1166(c) of our rules,<sup>3</sup> your Request is dismissed.

Under section 1.1162(b), regulatory fees are not required from "licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." You did not furnish evidence that R. Lee Hagan qualifies as a government entity, and asserting that R. Lee Hagan is a court appointed receiver does not establish the existence of that exemption.

<sup>1</sup> Facsimile Transmission from John C. Trent, Esquire, Law Offices Putbrese Hunsaker & Trent, P.C., 200 S. Church St., Woodstock, VA 22664 to Office of Managing Director, FCC (Aug. 19, 2011).

<sup>2</sup> The petitioner has the burden of clarifying its position before the Commission. *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997). Here, you assert that a receiver was appointed, but you failed to provide either the reason for the appointment or any supporting documentation, e.g., the petition to the court asserting the basis for the petition for appointment, the reason for the appointment, and copies of the relevant court filings. We will not speculate on either the grounds asserted or the reasons given for the court to grant the petition for receivership.

<sup>3</sup> 47 C.F.R. § 1.1166(c).

Concerning the waiver request, our rule at 47 C.F.R. § 1.1166(c) provides “[w]aiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.” You did not pay the fee or petition for deferment, and you did not provide us with that required supporting documentation to establish a compelling case of financial hardship.<sup>4</sup>

The FY 2011 regulatory fee of \$1,850.00 plus the 25% statutory penalty<sup>5</sup> of \$462.50 is now due. The regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If you fail to pay the full amount due by that date, interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter, and under the law,<sup>6</sup> the Commission will initiate collection proceedings.

Because you are delinquent in paying the FY 2011 regulatory fee, a debt owed the United States, under 47 C.F.R. § 1.1910, the Commission will withhold action on any application filed or pending, and if the debt plus the accrued penalty is not paid, or other satisfactory arrangements are not made, any application filed or pending may be dismissed. Moreover, the Commission may collect amounts due by administrative offset.<sup>7</sup>

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Chief Financial Officer

Enclosure

<sup>4</sup> The unsupported assertion that a state court appointed a receiver does not establish that the licensee is experiencing financial hardship. Assessment and Collection Of Regulatory Fees For Fiscal Year 2003, *Report and Order*, 18 FCC Rcd. 15985, 15989, ¶ 11, 19 FCC Rcd. 4701 (2003) (“case-by-case review of fee waiver requests is necessary to determine whether a waiver would be in the public interest, even in bankruptcy cases.”). See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

<sup>5</sup> 47 U.S.C. § 159(c); 47 C.F.R. § 1.1164. The penalty required by section 159(c)(1) is waived “only in the most extraordinary circumstances,” which are not described by your situation. McLeodUSA Telecommunications Services, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

<sup>6</sup> See 47 C.F.R. § 1.1901, *et seq.*

<sup>7</sup> 47 C.F.R. § 1.1912.

John C. Trent  
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LAC e-mail:  
[lac@colby.com](mailto:lac@colby.com)

August 19, 2011

VIA FACSIMILE AND E-MAIL

Federal Communications Commissions  
Office of the Managing Director  
445 12<sup>th</sup> Street, S.W., Room I-A625  
Washington DC 20554  
Facsimile No. (202) 418-7869  
Attention: Regulatory Fee Waiver/Reduction Request

Re: Letter Request for Regulatory Fee Exemption

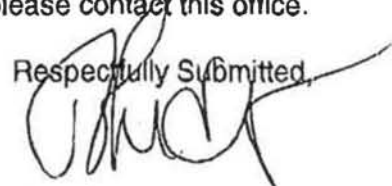
Dear Sir or Madam:

R. Lee Hagan is a State of Alabama Court Appointed Receiver ("Receiver") of Radio Station WTKE-FM (formerly WRKN-FM), Niceville, Florida (FCC Facility ID No. 10055) ("Station"). Pursuant to the FCC Regulatory Fee Information Website, a Fee Exempt Request is being submitted *via facsimile and email* for the Receiver. The Receiver, by his counsel, and pursuant to 47 CFR. § 1.1162(b), hereby respectfully requests the Managing Director for a waiver of the annual FY 2011 regulatory fee for the Station. Under this Section 1.1162(b), duly appointed public officials are fee exempt. Mr. Hagan is a State Court Appointed Receiver for the Station and should therefore be exempt under this Section of the Rules. Copies of the Appointment of Mr. Hagan have been previously provided to the Commission, however such documentation will be submitted again, upon Staff request.

In addition to being a duly appointed Alabama State Officer of the Courts, the Station, being in the nature of a Receivership, is in financial hardship. The Commission has granted waivers of the fees due to financial hardships on numerous occasions. *See Letter to Jeffrey L. Timmons, P.C. (KGJB (TV), El Dorado, Arkansas, KM Television of El Dorado, L.L.C., released June 18, 2010; see also Letter to Dan J. Alpert (WHDY-LP, Panama City, FL, Confessora Peralta), released March 1, 2010.* Under the circumstances, the Receiver respectfully requests a waiver of the Station's regulatory fees for 2011.

If this Letter Request is denied, the Receiver requests that any late penalty be waived and further that the Commission does not associate a "red-light" designation with the Station. If you require further information or have any questions, please contact this office.

Respectfully Submitted,



John C. Trent

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

DEC 16 2011

OFFICE OF  
MANAGING DIRECTOR

M. Anne Swanson, Esq.  
Dow Lohnes PLLC  
1200 New Hampshire Ave., NW  
Suite 800  
Washington, DC 20036-6802

Re: Revitalization Partners, LLC, General  
Receiver  
FY 2011 Regulatory Fee Waiver Request  
Filed: 9-12-11  
Fee Control No. RROG-11-00013846  
Regulatory Fee Amount: \$ 43,350.00

Dear Ms. Swanson:

This letter responds to the above-referenced request for waiver of regulatory fees filed on the grounds of financial hardship ("Regulatory Fees"). Our records reflect that the Regulatory Fees at issue have not been paid. For the reasons stated herein, your waiver request is granted.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.<sup>1</sup> The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>2</sup> Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.<sup>3</sup> "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>4</sup> Where relevant, the fact that the licensee is in bankruptcy or related receivership<sup>5</sup> may be

<sup>1</sup> 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

<sup>2</sup> 9 FCC Rcd at 5344 ¶ 29.

<sup>3</sup> 10 FCC Rcd at 12761-62 ¶ 13.

<sup>4</sup> *Id.*

<sup>5</sup> We require evidence that the licensee is in bankruptcy or receivership based upon appropriate financial purposes, e.g., to protect, preserve, and potentially enhance the value of the assets and maintain operations.

evidence of financial hardship; however, that fact will not relieve the petitioner of meeting its standard. Thus, we review each request, including those in which bankruptcy or receivership is asserted, on a case-by-case basis to determine whether the public interest warrants a waiver of the fee, and we may decline such a request.<sup>6</sup> Under all the circumstances of this case, including our review of the materials you submitted and the facts, we find that waiver of the fee is appropriate.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a stylized flourish extending from the end.

Mark Stephens  
Chief Financial Officer

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<sup>6</sup> In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Fiscal Year 2011 Regulatory Fees )  
 )  
Revitalization Partners, LLC, )  
General Receiver )

FILED/ACCEPTED

SEP 12 2011

Federal Communications Commission  
Office of the Secretary

To: Office of the Secretary  
Attn: Office of the Managing Director  
Regulatory Fee Waiver/Reduction Request

**PETITION FOR DEFERRAL AND WAIVER OF  
FISCAL YEAR 2011 REGULATORY FEES**

Revitalization Partners, LLC ("Revitalization"), general receiver for the licenses and assets of New Northwest Broadcasters, LLC ("NNB"), by its attorneys and pursuant to Section 1.1166 of the Commission's rules, 47 C.F.R. § 1.1166 (2010) respectfully requests deferral and waiver of the Fiscal Year 2011 Annual Regulatory Fees for Revitalization ("FY 2011 Fees") that would otherwise be due on September 14, 2011.<sup>1</sup> Consistent with Section 1.1166(c), Revitalization has not submitted payment of the FY 2011 Fees with this Petition and instead requests deferral of the FY 2011 Fees while the Commission considers this Petition.

Revitalization holds the radio broadcast licenses formerly held by NNB in its capacity as court-appointed general receiver as the result of an assignment for the benefit of creditors under the provisions of Washington state law and approval of the assignment of the licenses by the Commission. At the time of its appointment, Revitalization held the licenses for thirty-two

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<sup>1</sup> Regulatory Fees Fact Sheet, *Waivers, Reductions and Deferments of Regulatory Fees*, August 2011; Public Notice, *FY 2011 Regulatory Fees Due No Later Than September 14, 2011*, *Eastern Time (ET)*, DA 11-1420, August 17, 2011.

stations. Since its appointment, Revitalization has sold a number of the stations, and FCC applications seeking assignment of the licenses of others are pending.<sup>2</sup>

Under numerous past precedents, the Commission has determined that being in a state of receivership at the time regulatory fees are due is sufficient to establish financial hardship justifying waiver and deferral of regulatory fees.<sup>3</sup> Shortly over a year ago, Revitalization sought deferral and waiver of its Fiscal Year 2010 Annual Regulatory Fees (“FY 2010 Fees”), and earlier this year, the Commission granted that request.<sup>4</sup> Revitalization submits that deferral and waiver of the FY 2011 Fees are again clearly appropriate in this case.

## **I. BACKGROUND**

On May 17, 2010, NNB filed an Assignment for the Benefit of Creditors with the Superior Court of Washington State for King County (the “Court”), which created a general receivership under Washington state law.<sup>5</sup> The Court then entered an order on May 17, 2010, appointing Revitalization as the general receiver of NNB’s assets and licenses.<sup>6</sup> On May 28, 2010, the Commission granted consent to involuntary assignment of the NNB radio broadcast licenses to Revitalization as general receiver.<sup>7</sup> Accordingly, many of the assets and licenses

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<sup>2</sup> See Attachment A for a list of the licenses currently held by Revitalization, the FCC Form 316 application file numbers wherein the Commission granted involuntary assignments of the licenses to Revitalization as general receiver, and the file numbers of currently pending applications for assignment of the licenses of some of the stations.

<sup>3</sup> See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301, ¶ 30 (2009) (“2009 Report and Order”).

<sup>4</sup> Letter of Mark Stephens, Chief Financial Officer, Federal Communications Commission, to M. Anne Swanson, Esq., March 18, 2011 (“*Revitalization FY 2010 Fee Waiver*”).

<sup>5</sup> See Attachment B (Assignment for the Benefit of Creditors and Petition).

<sup>6</sup> See Attachment C (Order Appointing General Receiver).

<sup>7</sup> See Attachment A for FCC file numbers for stations still owned by Revitalization.

formerly held by NNB are currently held by Revitalization under the supervision of the courts of the State of Washington, pending disposition for the benefit of NNB's creditors.

The FY 2011 Fees for the former NNB broadcast licenses held by Revitalization total \$43,360.00.<sup>8</sup> This amount poses a substantial financial hardship for Revitalization, which is charged with preserving the receivership estate's limited resources. Moreover, as the Commission has recognized, the FY 2011 Fees could act as an impediment to the transfer of the former NNB broadcast licenses to a new licensee.<sup>9</sup>

Congress authorized the Commission to "waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."<sup>10</sup> Section 1.1166 of the Commission's rules, which implements the statutory scheme, similarly permits waiver of regulatory fees "where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."<sup>11</sup> In this unified Petition, Revitalization requests both deferral and permanent waiver of the FY 2011 Fees.

## **II. DEFERRAL AND WAIVER OF REVITALIZATION'S FY 2011 FEES ARE JUSTIFIED BY APPLICABLE FEE WAIVER STANDARDS, COMMISSION PRECEDENT, AND THE PUBLIC INTEREST.**

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In the rulemaking context, the Commission repeatedly has held that evidence of receivership is itself a sufficient demonstration of financial hardship justifying waiver of

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<sup>8</sup> For calculation purposes, the call signs of radio broadcast licenses now held by Revitalization as general receiver are listed on Attachment A.

<sup>9</sup> See *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Memorandum Opinion and Order, 10 FCC Rcd 12759, ¶ 14 (1995) ("1995 MO&O").

<sup>10</sup> 47 U.S.C. § 159(d) (2005).

<sup>11</sup> 47 C.F.R. § 1.1166 (2009).

regulatory fees under the case-by-case review described in Section 1.1166.<sup>12</sup> In particular adjudicatory decisions, including one involving Revitalization within the last year, the Commission has granted numerous regulatory fee waivers based on licensees being involved in state court receivership and federal bankruptcy at the time fees are due.<sup>13</sup> Indeed, in its Report and Order assessing FY 2009 regulatory fees, the Commission specifically addressed the financial hardship waiver standard for broadcasters, reiterating that it “accepts as evidence of financial hardship that licensees’ stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership” and that these “bright line tests . . . can be administered predictably.”<sup>14</sup>

It is undisputed that Revitalization and the stations for which it is licensee are in receivership. This fact alone justifies waiver.

Revitalization submits that deferral and waiver of the fees will also serve the public interest by (i) allowing Revitalization to fund the costs of operating the former NNB stations in order to serve listeners while in receivership, (ii) assisting Revitalization in preserving the limited resources of the receivership estate while Revitalization seeks to liquidate NNB’s assets, and (iii) helping to stem the losses from the amounts due to NNB’s creditors. Absent waiver relief, these funds would not be available for such purposes.

In the numerous adjudicatory decisions noted above, the Commission has allowed deferral of the payment of fees while the waiver requests were being evaluated. In these cases,

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<sup>12</sup> See, e.g., *2009 Report and Order*, ¶ 30; *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 18 FCC Rcd 15985, ¶ 11 (2003) (“*2003 Report and Order*”); *1995 MO&O*, ¶ 14.

<sup>13</sup> See, e.g., *Revitalization FY 2010 Fee Waiver*; *Letter from Mark Stephens to Nancy L. Isserlis*, dated Apr. 22, 2010 (granting waiver of Fiscal Year 2009 regulatory fees due to receivership); *Letter from Mark Stephens to John R. Feore, Esq.*, dated Mar. 1, 2010 (similar waiver and deferment based on federal bankruptcy); *Letter from Mark Stephens to Nancy L. Isserlis*, dated Oct. 29, 2009 (granting waiver of Fiscal Year 2009 regulatory fees due to receivership).

<sup>14</sup> *2009 Report and Order*, ¶ 30.

the Commission did not articulate any difference in the standards for waiver of payment and deferral of payment. In its most recent *Report and Order* establishing the standard and procedures for payment of regulatory fees for FY 2011, the Commission reiterated that it would defer payment “[i]n exceptional and compelling instances (*e.g.*, where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee). . . .”<sup>15</sup>

In the case of Revitalization, its receivership status demonstrates financial hardship. In addition, payment of the \$43,360.00 otherwise due on September 14, 2011 would cause a diminution in service as well as financial hardship. The stations licensed to Revitalization operate in small to mid-sized markets in the Pacific Northwest and Alaska. To such small properties, that sum can make a huge difference in the retention of staff and production of broadcast programming that meets local community needs. The budgets of these stations are each measured in the thousands, not millions, of dollars. The potential negative effects on the public interest that would be caused absent a deferral of payment, plus the substantial volume of Commission precedent allowing deferral in receivership and bankrupt situations, compel deferral here as well.

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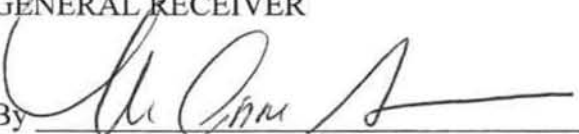
<sup>15</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2011*, Report and Order, MD Docket No 11-76, FCC 11-114, released July 22, 2011, Appendix F, ¶ 84.

### III. CONCLUSION

Because Revitalization holds the former NNB licenses as general receiver of NNB's former assets, the Commission should defer and waive the entirety of its FY 2011 Fees. Such action would not only be consistent with well-established precedent and FCC standards but would also accord with the public interest.

Respectfully submitted,

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GENERAL RECEIVER

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